



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	8/09/04	Bill No:	AB 1850
Tax:	Insurance	Author:	Cohn
Related Bills:			

BILL SUMMARY

This bill would specify that a for-profit health care service plan shall be considered an insurer for the purpose of imposition of the gross premiums tax for its preferred provider organization business.

Summary of Amendments

Since the previous analysis, amendments removed provisions that would have placed into law specific requirements related to retention of business records, necessary for property tax purposes. The bill now contains provisions related to the definition of insurers for the purpose of imposing the gross premiums tax.

ANALYSIS

Current Law

The insurance tax is administered by three state agencies, the Board, the Department of Insurance (DOI) and the Controller. The Controller acts as a collector of the tax. The DOI is primarily responsible for licensing and regulating insurers under the Insurance Code. This includes assessing the amount of tax each insurer is required to pay. The Board is responsible for issuing the assessments provided by DOI and for deciding the validity of any petition for redetermination.

Section 28 of Article XIII of the California Constitution provides for the taxation of insurers doing business in California. The basis of the annual insurance tax is gross premiums, less return premiums (commonly referred to as the gross premiums tax). The gross premiums tax is imposed on insurers at a rate of 2.35% in lieu of all other taxes and licenses, with specified exceptions. Any person that meets the definition of an "insurer" pursuant to Section 28 of Article XIII is required to register with DOI and is subject to the annual gross premiums tax.

The definition of insurer does not expressly include a health care service plan. Health care service plan providers are covered under the Knox-Keene Health Care Service Plan Act. The Department of Managed Health Care (DMHC) is responsible for administration of the Knox-Keene Act. Under the Knox-Keene Act, health care plan providers (including all HMOs and some PPOs) are subject to California's general tax on corporations. Unless otherwise provided by law, corporations doing business or incorporated in California must pay a franchise tax equal to the greater of the minimum of \$800 or an amount measured by net income multiplied by the current tax rate, which is 8.84%.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

Background

Health plans that operate under the regulations of the DMHC (“managed care” plans that include HMOs and some PPOs) are subject to the Knox-Keene Act which contains an extensive array of consumer protection requirements, minimum benefit packages, and limitations on the amount of co-payments and deductibles. Generally, health care providers such as HMOs and PPOs subject to the Knox-Keene Act provisions under the administration of the DMHC are not subject to the gross premiums tax.

Health insurance that is offered under the DOI’s regulatory structure includes traditional fee-for-service arrangements and some PPOs. In contrast to DMHC-licensed arrangements, however, DOI-licensed plans are subject to different consumer requirements, have a less extensive minimum benefits package, and are allowed to have higher co-payments and deductibles than managed health care plans.

Blue Cross of California is currently the only for-profit PPO registered at DMHC. As such, Blue Cross pays the franchise tax on their PPO business in California rather than paying the gross premiums tax. Even though the tax rate is higher for the franchise tax than it is for the gross premiums tax, it is more advantageous for Blue Cross to pay the franchise tax since it is based on net income as opposed to the gross premiums tax that is based on gross premiums.

Proposed Law

This bill would add Section 1396.6 to the Health and Safety Code to provide that a for-profit health care service plan shall be considered an insurer solely for the purpose of Section 28 of Article XIII of the California Constitution for its preferred provider organization business.

COMMENTS

1. **Sponsor and purpose.** The measure is sponsored by the author. The purpose of this bill is to require Blue Cross of California to pay the gross premiums tax on their PPO business licensed under the DMHC. According to the author’s office, if Blue Cross would have been subject to the gross premiums tax on their PPO business in 2003, it would owe the state of California an additional \$68 million.
2. **Summary of amendments.** Previous versions of this bill contained provisions that would have placed into law specific requirements related to retention of business records, as defined, necessary for property tax purposes. The July 28 amendments removed the property tax provisions and added new provisions related to the definition of insurers for the purpose of imposing the gross premiums tax. The August 9 amendments made technical amendments to the bill.
3. **This bill would not impact the Board’s administration of the gross premiums tax.** The Board’s role in administering the gross premiums tax is to issue the assessment to the insurer as determined by the DOI. Requiring Blue Cross to pay the gross premiums tax would not change the roles or responsibilities of the Board.

COST ESTIMATE

Enactment of this measure would not have any impact on the Board's administrative costs.

REVENUE ESTIMATE

Assessment of the gross premiums tax is the responsibility of the DOI. As such, no revenue estimate will be provided as this is outside the scope of the responsibility of the Board.

Analysis prepared by:	Bradley Miller	916-445-6662	08/16/04
-----------------------	----------------	--------------	----------

Contact:	Margaret S. Shedd	916-322-2376
----------	-------------------	--------------

Is

1850-2bm.doc

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.